IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Michael G. Long and Cheryl A. Wilcox Long, Plaintiffs, v. Bayview Loan Servicing, LLC, Equifax Information Services, Inc., Experian Information Solutions, Inc., and Trans Union LLC, Defendants.	Case No. 1:16-cv-11762 Hon. John R. Blakey

DEFENDANT EXPERIAN INFORMATION SOLUTIONS, INC.'S RESPONSE TO PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE ITS RESPONSE TO EXPERIAN'S MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs' Motion For Extension of Time to File Its Response to Experian's Motion for Judgment on the Pleadings ("Plaintiffs' Motion to Extend Time") should be denied as unnecessary because it concedes the central point of Experian's Motion: Plaintiffs' Complaint fails because it attempts to require that Experian act as a *de facto* bankruptcy tribunal tasked with monitoring, interpreting, and applying complex facts and legal principles of bankruptcy law. Furthermore, the Bankruptcy Court refused to reopen Plaintiffs' bankruptcy case, eviscerating Plaintiffs' only argument that "good cause" exists to delay their response to Experian's Motion. Indeed, Plaintiffs should not be granted a response to Experian's motion at all, because doing so would grant them the relief they sought, despite the meritless nature of their Motion. The Court need not delay in resolving the legal question Experian presented in its Motion for Judgment on the Pleadings, and Plaintiffs' Motion to Extend Time should be denied.

BACKGROUND

Plaintiffs filed this action alleging that Experian violated the FCRA by inaccurately reporting Plaintiffs' account with Bayview Loan Servicing, LLC ("Bayview") as past due and in foreclosure proceedings despite Plaintiff's Chapter 13 bankruptcy discharge. (*See generally* Dkt. 1 ¶¶ 80–105.) On April 4, 2017, Experian filed a motion for judgment on the pleadings, making two principle arguments (Dkts. 38, 39.) First, Experian argued that, contrary to Plaintiffs' allegations, a review of the public record showed that Plaintiffs' obligations had not been discharged, both because Plaintiffs had not surrendered the property as required in their bankruptcy plan and because the foreclosure was (as Experian reported) ongoing. (Dkt. 39 at 8–11.) Second, Experian argued that settling the question of whether Plaintiffs' debt was in fact discharged is a legal question and not a suitable basis for FCRA liability. (*Id.* at 11–12.)

On April 26, 2017, the day before Plaintiffs' response to Experian's motion was due, Plaintiffs asked this Court for an extension of time to file their response. (Dkt. 42.) Attached to Plaintiffs' Motion to Extend Time was a copy of Plaintiffs' Motion to Reopen Chapter 13 Case for the Limited Purpose of Adjudication of Discharge and Motion for Adjudication of Discharge (the "Motion to Reopen"). (*See Id.*, Ex. A.) According to Plaintiffs, the Motion to Reopen was "necessary to determine the legal issue at the heart of Experian's Motion for Judgment on the Pleadings" and "the Bankruptcy Court is entitled to the opportunity to provide a more definite statement regarding its own prior order." (*Id.*¶ 12.) Notably, Plaintiffs' Motion to Reopen left out the crucial detail that Plaintiffs had not surrendered their property. More importantly, Plaintiffs' Motion to Extend Time overlooked the second thrust of Experian's argument for dismissal (Dkt. 39 at 11–12) entirely.

On May 4, 2017, counsel for Plaintiffs, Bayview, and Experian appeared before Judge Hollis on Plaintiffs' Motion to Reopen and for a Determination of Dischargeability. Without argument or comment by the Parties, Judge Hollis denied Plaintiffs' Motion to Reopen on the ground that this Court is fully capable of applying the law to resolve the dispute before it.

LEGAL STANDARD

In general, the court may, for good cause, extend the time to respond to a judgment on the pleadings if a request is made before the original time or its extension expires. Fed.R.Civ.P. 6(b)(1). Because the district court may exercise its discretion under Rule 6(b)(1) only "for good cause," a party must demonstrate some justification for the issuance of the extension. *See* Motion Practice, United States District Court for the Northern District of Illinois, *available at* https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=457 ("A motion for extension of time shall not be granted except on a showing of good cause."). Importantly, an extension of the time period is by no means a matter of right. *See* 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1165 (3d ed. 2002); *Eller v. Trans Union, LLC*, 739 F.3d 467, 478 n.10 (10th Cir. 2013).

ARGUMENT

Plaintiffs' Motion to Extend Time should be denied because (1) the Bankruptcy Court 's refusal to reopen Plaintiffs' bankruptcy case eviscerates the "good cause" proffered by Plaintiffs in their Motion to Extend; (2) the prospective Bankruptcy Court adjudication of Plaintiffs' discharge was never relevant to Experian's liability in this case, and (3) Plaintiffs' delay tactics will prejudice Experian and unnecessarily delay the Court's resolution of the questions of law presented in Experian's Motion. Furthermore, Plaintiffs waived their opportunity to respond to the merits of Experian's Motion by choosing to file their motion to extend, rather than a response, and accordingly, should not be allowed a response brief which would be tantamount to a *de facto* extension.

A. PLAINTIFFS CANNOT DEMONSTRATE "GOOD CAUSE" BECAUSE THE BANKRUPTCY COURT REFUSED TO REOPEN PLAINTIFFS' BANKRUPTCY CASE AND BECAUSE THE ADJUDICATION OF PLAINTIFFS' DISCHARGE IS IRRELEVANT TO RESOLVING EXPERIAN'S MOTION

The court may grant Plaintiffs' Motion to Extend Time only if Plaintiffs can demonstrate "good cause." FED.R.CIV.P. 6(b). Unfortunately for Plaintiffs, the Bankruptcy Court eviscerated Plaintiffs' already weak basis for "good cause" (determining the scope of Plaintiffs' bankruptcy discharge) by refusing to reopen Plaintiffs' bankruptcy to consider the "comfort order" sought by Plaintiffs. Because the Bankruptcy Court adjudication was the only cause Plaintiffs offered in their Motion to Extend, their Motion must now be denied.

Furthermore, even if the Bankruptcy Court had not rejected Plaintiffs' "Hail Mary" Motion to Reopen, Plaintiffs' "good cause" argument was always a non-starter, as the question Plaintiffs sought to resolve by reopening their bankruptcy case is irrelevant to determining Experian's liability in this matter. In their Motion to Extend, Plaintiffs incorrectly suggest that the main question to be answered by this Court in ruling on Experian's Motion is whether or not the Bayview loan was discharged when Plaintiffs filed this case against Experian. (*See* Dkt. 42 ¶ 9.) To be sure, that it is *one* relevant issue in Experian's Motion.[1] However, as set forth in Experian's Motion, the more fundamental question for this Court is whether Experian was required under the FCRA to act as a tribunal and determine the uncertain legal status of the Bayview debt. (*See* Dkt. 39 at 11 ("Assuming Plaintiffs are correct that their obligation to Bayview was discharged, Experian's reporting of the Bayview account is inaccurate only by

[1] Of course, if Plaintiffs had genuine concerns about whether their liability to Bayview had been discharged, they should have raised that *before* filing federal litigation based on claims that it had.

virtue of the operation of complex principles of bankruptcy law.”). Plaintiffs’ Motions effectively concede (by asking the Bankruptcy Court to adjudicate the legal status of the debt and by asking this Court to wait for the Bankruptcy Court ’s decision) that Experian’s reporting was incorrect (if at all) only because no one—not Plaintiffs, not Bayview, and certainly not Experian—was sure of the legal status of the Bayview loan once the bankruptcy was discharged but Plaintiffs had not fulfilled their obligation to surrender the Natoma Property. Accordingly, as the Bankruptcy Court stated on May 4, 2017, this Court is fully capable of resolving the legal question before it, demonstrating that the prospective Bankruptcy Court adjudication was never grounds for Plaintiffs to delay their response to Experian’s Motion and highlighting that the issue is a legal one, not a factual one.

B. EXPERIAN WILL BE PREJUDICED IF PLAINTIFFS ARE GRANTED AN EXTENSION

Plaintiffs’ Motion to Extend Time, if granted, will further elongate this case unnecessarily and to the detriment of Experian. While Experian waits for this Court to rule on its Motion for Judgment on the Pleadings, Experian continues to incur substantial costs associated with litigating this case. For example, Experian is incurring substantial costs in preparing and responding to discovery.

Furthermore, Plaintiffs, as was likely their aim, have already received the relief they sought, gaining a *de facto* extension by filing their Motion to Reopen, instead of responding to Experian’s motion. This sort of docket gamesmanship is disfavored and warrants denying Plaintiffs any further opportunity to respond to the substance of Experian’s Motion for Judgment on the Pleadings. *See e.g.*, *Holmes v. FDIC*, No. 11-cv-0511, 2011 U.S. Dist. LEXIS 45020, at *6 (E.D. Wis. Apr. 19, 2011) (“[W]ithout an order or other direction from the court, briefing obligations are not suspended simply because of a belief that one pending issue or another should be resolved first."). Where, as here, a litigant fails to meet a deadline in the hopes of a favorable ruling, he is "rolling the dice" and may be saddled with the consequences of that gamble. *Socha v. Pollard*, 621 F.3d 667, 672–73 (7th Cir. 2010); *accord Doe v. Cunningham*, 30 F.3d 879, 882–85 (7th Cir. 1994) (holding that the district court did not err in denying extension to respond to motion for summary judgment and then granting summary judgment to movant where no response had been filed by the original deadline).

As their actions make clear, Plaintiffs need neither an extension nor a response to Experian's Motion. Plaintiffs have agreed with Experian that determining whether the Bayview account was discharged in light of the facts alleged in the Complaint is a complex question most appropriately addressed to the courts, not to Experian under the guise of FCRA litigation.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Extension of Time should be denied, Plaintiffs should be denied the right to respond to Experian's Motion for Judgment on the Pleadings, and the Court should grant Experian's Motion for Judgment on the Pleadings.

Dated: May 5, 2017

Respectfully submitted,

/s/ Christopher A. Hall

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 5, 2017, the foregoing was filed using the CM/ECF system, which will send notice to all parties of record.

/s/ Christopher A. Hall
One of the Attorneys for Defendant Experian Information Solutions, Inc.

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